

UNITED STATES DISTRICT COURT
MIDDLE DISTRICT OF FLORIDA
FORT MYERS DIVISION

BRANCH BANKING AND TRUST
COMPANY, a North Carolina banking
corporation, as successor-in-interest to
Colonial Bank by asset acquisition from
the FDIC as Receiver for Colonial Bank,

Plaintiff,

v.

Case No: 2:13-cv-373-FtM-38UAM

MICHAEL DUNN, individually,
DAVID D'AMORE, individually,
PAMELA D'AMORE, individually,
CABOT L. DUNN, JR., individually,
REGINA DUNN, individually, and
LODGE CONSTRUCTION, INC., a
Florida corporation,

Defendants.

ORDER

This matter comes before the Court on Plaintiff's Notice of Voluntary Dismissal Without Prejudice of Counts IX and X of Lawsuit (Doc. #4), filed on May 22, 2013. Plaintiff seeks to dismiss Counts IX and X of the Complaint (Doc. #1), without objection from Defendant.

Under Federal Rule of Civil Procedure 41(a)(1)(A), a plaintiff may dismiss an action without a court order "before the opposing party serves either an answer or a motion for summary judgment" or by "a stipulation of dismissal signed by all parties who have appeared." In the Eleventh Circuit, "precedent dictates that Rule 41 allows a plaintiff to dismiss all of his claims against a particular defendant; its text does not

permit plaintiffs to pick and choose, dismissing only particular claims within an action.” Campbell v. Altec Indus., Inc., 605 F.3d 839, 841 n. 1 (11th Cir. 2010). As Plaintiff is only seeking to dismiss Counts IX and X, the voluntary dismissal will be denied and Plaintiff is directed to file an Amended Complaint without Counts IX and X. Once the Amended Complaint is filed, Defendant shall have twenty-one days to file an answer or other responsive pleading pursuant to Rule 12(a).

Accordingly, it is now

ORDERED:

Plaintiff’s Notice of Voluntary Dismissal Without Prejudice of Counts IX and X (Doc. #4) is **DENIED** without prejudice. Plaintiff is directed to file an Amended Complaint without Counts IX and X on or before **June 21, 2013**. The Defendant shall have twenty-one (21) days from the date of the Complaint to file an answer or other responsive pleading.

DONE and **ORDERED** in Fort Myers, Florida this 11th day of June, 2013.


SHERI POLSTER CHAPPELL
UNITED STATES DISTRICT JUDGE

Copies: All Parties of Record